

ZONING BOARDS, SYNAGOGUES, AND BIAS

Religious Tolerance in the Suburbs

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DURING the last few years in widely separated parts of the country, many congregations have been denied building or use permits for the construction of houses of worship or for the occupancy of already existing structures on the ground that such construction or occupancy would violate local zoning ordinances. As one heard of such incidents in Long Island, Wilmington (Delaware), Pittsburgh, Cleveland, and St. Louis, one's first thought, one's first suspicion, might well have been that these were cases of discrimination, that the concept of "restricted" residential districts was being extended to include synagogues and temples. For it was hard to believe that a congregation would go to the trouble of selecting a site, preparing plans, and raising funds before it had made absolutely certain that it could satisfy the requirements of the zoning ordinances. The suspicion of anti-Semitism was nourished by the further circumstance that all the congregations encountering difficulties were located in the suburbs—they were newcomers from the large cities, where they had been relatively immune to the gross forms of discrimination practiced against Jews as a group.

But Jews are not the only people to have been defeated by zoning ordinances. Where there is anti-Semitism, there is often anti-Catholicism; and the very large postwar construction program for Catholic institutions

has also had its run-ins with local building regulations. Yet a spokesman for the Building Commission of the Archdiocese of New York writes me: "... to my knowledge, we have never felt that there was any bias or anti-Catholic opposition. Wherever we have had difficulty, it was in the technical language of an ordinance and its interpretation." This is, of course, an official statement; about particular situations individual Catholics may have another opinion. Yet the Building Commission's statement must give us pause in charging anti-Jewish bias whenever a congregation's petition to build is denied. Bias, certainly, is often a factor, yet the cases discussed in this article indicate a variety of other factors among which bias—if it exists—may well be a secondary one.

Where bias does exist, it is not written large for all to see. In a study of "Bias in the Use of Governmental Regulatory Powers," Charles Abrams reported on his investigation of cases in which regulations governing sanitation or building or zoning were used to keep a minority group out of a housing development, or, if the group was already in, to hound them out. "Administrative chicane," he writes, "is highly difficult to detect and contest. . . . Those in control are not prone to make a record of their discriminatory policies or give the minority the evidence on which their oppression can be tested. The civil rights lawyer is no longer afforded the luxury of the clear test on the admitted facts. Each case requires money, labor and patience to dig out evidence, and in the end victory may establish only that the particular administrative act was unreasonable. . . ."

By and large, these observations apply to the cases of the synagogues refused permission to build. Congregations with the money,

THE elusive question of how far bias figured in the denial of permits to a number of suburban Jewish congregations seeking to establish quarters for worship is here examined by WILLIAM SCHACK. Mr. Schack's two-part article, "The Books of Doom," written in collaboration with his wife, appeared in our issues of last October and November.

patience, and spirit to contest the adverse verdicts of zoning boards have found that the courts would sustain them in the end. However, even when the issue of anti-Semitism could be raised explicitly, resolving it often turned out to be impossible. But the cases before us are so various that we had better pass on from these generalizations to considering them individually.

Two of them are clear-cut enough. In the city of Pittsburgh, the zoning board withheld a permit from Temple Emanuel until it agreed to pay taxes on twelve of the twenty acres it had acquired as a building site, which the temple finally agreed to do. The issue here concerned the applicability of the law exempting religious institutions from taxation—since the temple avowedly planned to use only eight of the acres for itself, reserving the rest for ultimate sale, presumably for profit. This question of taxation was the only issue; there was no talk of withholding the permit for any other reason.

Almost as clear-cut was the case of Congregation Beth Emeth, in Wilmington, Delaware. The congregation had purchased a site in a private housing development fully aware of the fact that there was a perfectly straightforward clause in every bill of sale which required any public institution seeking to build in the development to obtain the written permission of everyone owning property contiguous to and opposite its site. With only one person did Beth Emeth encounter any difficulty: this man, I was told, offered to sign a release, but on condition that the congregation buy his house at what was said to be an outrageous price, plus a \$5,000 "convenience" fee. But as it happened, the temple's land was crossed at one end by a busy state highway, and it went to court to seek release from the restrictive covenant on the ground that its particular location was not of a "quiet residential nature," as the development purported to be. This move persuaded the recalcitrant property owner to accept an out-of-court settlement of \$1,000—the congregation could now build.

According to Congregation Beth Emeth's Rabbi Herbert E. Drooz, the man who gave them all the trouble was a person known to have made derogatory remarks about Jews. So what we have here is not a case of discrimination by a dominant group or even by any group, but merely the balkiness of one reputedly prejudiced individual.

FAIRMOUNT TEMPLE in Beachwood, Ohio, is an offshoot of Cleveland's Euclid Avenue Temple, over which Rabbi Barnett R. Brickner has presided for thirty years. Euclid Avenue is Cleveland's Broadway, running far to the east from its point of origin in the downtown Public Square. When the large, austere Romanesque temple was built four miles from Public Square, that part of Euclid Avenue was suburban. During the 1940's the neighborhood turned commercial, and most of the congregation, grown to some 2,300 families, moved to Cleveland Heights and the suburbs beyond, such as Shaker Heights and Beachwood.

In looking for a site big enough to accommodate a new and larger temple, the building committee found a tract of more than thirty-one acres of undeveloped land, in the Village of Beachwood on the eastern boundary of Cleveland. When it took an option on this land in 1948, the building committee informed the village council what its purpose was, and this was formally recorded in the minutes of the council for July 19 of that year. When the council signified informally its lack of objection, and the then mayor of Beachwood, John B. Mullaney, assured the committee that there would be no difficulty in obtaining a building permit, the purchase was completed; \$45,000 was paid for the land and \$5,000 to satisfy delinquent taxes. But when Mr. Mullaney reported this at a meeting of the six-man council on August 23, its president announced that he himself would never approve a permit, and one councilman took exception to the size of the property.

To placate this councilman, the temple offered to dispose of a four-acre strip that could be used for home development. Satis-

fied then that only the president of the council would oppose the granting of a permit, and that he would be overridden, the temple launched a fund-raising campaign, and kept the mayor of Beachwood informed of its progress through 1950 and 1951.

Early in 1951, one of the temple's architects presented plans to the Board of Architectural Review, which declared that an additional set of plans had to be submitted to the council accompanying a formal request for a permit. Receiving these in August, the council set a date for a hearing five months off—for January 21, 1952.

Twenty-five people—all owning property adjacent to the temple site—turned up at the hearing. Eighteen of them were in favor of permitting the temple to build; of the five opposed, the most forthright said that he had "moved out here to get away from churches." Another put the same idea less bluntly: he had come to Beachwood thinking it was to be an entirely residential neighborhood. (When he learned that the Catholic Diocese had been granted a permit to build in Beachwood, he said the temple should also be allowed to establish itself in the community.) A third resident wanted to know just why the temple had selected Beachwood, and found the answer—that it could find no other suitable site—reasonable. (But he later recommended that the Council should deny the permit.) Two other objections were raised: to the size of the temple, and to the fact that it would mostly serve people living outside the village.

There were no other opposing speakers from the floor, nor did the Council receive any further communications on the subject except a few telephone calls (whose tenor it did not disclose) and a "personal letter" from the former mayor, Mr. Mullaney, whose contents it also did not reveal at the hearing. (Unfortunately for the temple, Mr. Mullaney was abroad at the time of the hearing and could not appear in person.)

In his letter Mr. Mullaney still advocated a favorable decision, first because the Council had meanwhile granted building permits to both the Catholic Diocese and a Presby-

terian church, and secondly because he was sure that the leaders of the temple were "prepared to meet any reasonable Village requests in the final plan and arrangements." Following the hearing, an anonymous petition was circulated among all the residents of Beachwood; when a large majority registered their opposition in the petition to granting the permit, the Council, on February 19, 1952, obeyed their mandate.

FAIRMOUNT TEMPLE took the case to court, charging the Council with abuse of its discretionary powers—and with discrimination. The defense consisted largely of an elaboration of the objections which had been raised at the hearing. The council's attorneys, Mr. Walter C. Kelly, Jr., and Mr. King Wilmot (special counsel), laid particular stress on the size of the temple, "the largest Jewish organization of its kind in the United States, probably the largest in the world." They pointed out that it was a county-wide, not a Beachwood institution, and asserted that "a large institution of non-residents comprising a membership over three times the size of the community in which it is located [Beachwood's population was then about 1600] would soon dominate" its social and political life. It would also destroy the "quiet, natural, semi-rural surroundings and atmosphere" which, "in these days of nervous breakdowns, neuroses and complexes," could not but have "a relaxing, prophylactic effect." Certainly Beachwood did not want to stand in the way of progress. But was it progress when "the virtues of small-town life" were sacrificed to the demands of 'bigness'? Learned counsel invoked Justice Brandeis's *The Curse of Bigness* (Brandeis meant bigness in industry!).

The brief declared that the Council had "no antipathy or antagonism" toward the temple. "Its good works and noble purpose are recognized. As a large institution, it has its place in a large metropolitan community. But, like a whale in a goldfish bowl, it would be totally out of place in the Village of Beachwood."

This and all the other arguments raised

by the defense—that most of the members of the temple lived outside of Beachwood, that it would create a financial burden for the community by removing so much potentially taxable land from the tax register, that it would create traffic hazards, that it would not serve the public welfare—were answered by the temple's counsel, Mr. Morris Berick, of Halle, Haber, Berick and McNulty, to the satisfaction of the court of first instance; and its ruling in favor of Fairmount Temple was sustained by two higher courts.

Mr. Berick openly charged that the Council acted from bias in turning down the temple's application. Before the Court of Appeals he declared: "The method of refuting the possible charge that the discrimination against the Temple was based on racial and religious grounds is hardly persuasive. Respondents' [defendants'] counsel asked the Village officials whether anyone at the Council meeting expressed opposition to the Temple on the ground that it was Jewish. We are sure that he did not expect a 'yes' answer. Neither did we, and that is why we did not bother to put the question. Indeed we were surprised when the President of Council did not immediately answer with a positive 'no' but gave the qualified answer, 'not to my recollection.'"

In order to show that the Council was free of religious bias, its attorneys in their first brief pointed out that there were already a Presbyterian church and a Catholic church and parochial school in the community and that "in all probability a pending application for a small Jewish temple . . . will also be granted." But why, asked Mr. Berick later, "was a permit given to one church [the Catholic] without a public hearing? Why did the notice for a public hearing for the other [the Presbyterian] expressly advise the neighbors that the Zoning Commission had recommended the issuance of a permit? Why did Council in the Temple case act without any recommendation—favorable or adverse—by its Zoning Commission? Why were not petitions circulated to obtain the views of the entire

Village population in connection with the other [church] applications, or with the applications for the golf range and the schools [which were also granted]? If the Village population in 1950 was 1057, it was undoubtedly about 700 or 800 in 1948. It is very unlikely that any Christian denomination or any one of the three Jewish denominations then had enough residents in Beachwood to support a church. Why was the question of the non-residence of the members not a factor in the 1948 application [of the Catholic church]?"

The courts did not take cognizance of the issue of discrimination. They didn't have to: the case was won upon the courts' determining that failure to issue a permit to Fairmount was an abuse of discretion in the administration of the zoning ordinance. But what we should like to know is how the Council came to commit this abuse—innocently, in mistaken judgment, or deliberately, from bias?

ONE may or may not think that Mr. Berick made a case for the existence of bias. Against it, however, must be set the fact that the Council did grant a permit to the "small Jewish temple" to which the attorney for the Council referred—granted it without fuss, within three months after it had filed its petition. That was more than five years after Fairmount had acquired its site—and while its case was still in the courts. Why the Council's hostility toward Fairmount and benignity toward Suburban Temple (Reform, as Fairmount is too)? The official answer was that Suburban was a much smaller congregation, in keeping with the size of the community. The undisputed granting of a permit to Suburban therefore strengthened the Council's claim that it was denying one to Fairmount only because of the latter's large size. Of course, it could have favored Suburban for the very purpose of bolstering its case against Fairmount. Certainly this would have been discrimination against Fairmount, but is it anti-Semitic to prefer a few hundred to a few thousand Jews? When

anti-Semitism turns quantitative in this way, surely it has lost a good deal of its virulence.

UNLIKE Fairmount, the Community Synagogue of Sands Point, New York, was a new congregation, under Rabbi Eugene B. Borowitz, and the community, unlike Beachwood, was an old one. The case also differed from Fairmount's in that the Community Synagogue was not building from the ground up, but was taking over an already developed property; this entangled it in an even more complex web of technicalities.

Before 1950, some twenty Sands Point families had held services in a small Conservative synagogue in the nearby town of Port Washington. The Jewish population of the area skyrocketed, and in 1952 a Reform group took shape in Sands Point. It continued to share the Port Washington synagogue with the Conservative congregation, but an attempted merger did not work out. The new Community Synagogue therefore acquired its own site—four acres in a development of moderate-sized homes known as Harbor Acres—and applied for a building permit. Harbor Acres is at the beginning of Sands Point, over the line from non-exclusive Port Washington and some distance from the elaborate estates established long ago by both Jews and Gentiles. The village trustees granted the permit; Mayor George S. Bergman, himself of Jewish origin, was present at the ground-breaking ceremony in 1953. Not long after, however, residents of Harbor Acres brought suit against the promoters of the development; they claimed that it was supposed to have been limited entirely to one-family homes. When the court ruled against them, they appealed the decision. A year passed—a year lost for the congregation, during which its membership grew to some two hundred families, causing the Port Washington synagogue to press it to find quarters elsewhere. For two years the newcomers had to hold their High Holiday services on rented premises.

While the appeal was pending, the Com-

munity Synagogue learned that the estate known as "The Chimneys" was for sale. This was a 31-acre property which Mr. Christian R. Holmes had bought in 1928 and developed at a cost of some two million dollars. The main building had forty-two rooms, including fourteen bedrooms and twelve bathrooms. There were several other substantial buildings on the property, indoor and outdoor swimming pools, tennis court and greenhouse; and the generous grounds were extensively landscaped. After the death of Mrs. Holmes in 1941, The Chimneys had been used, successively, as a recreation and social center for the crew of the French battleship *Richelieu*, as a convalescent home for the U. S. Merchant Marine, and then as a naval officers' home and club.

Some years before, the Astor estate in Sands Point had been sold to the International Business Machines Company as a rest home for its employees and there was some talk about pressure having been brought to bear on the Holmes Foundation to sell The Chimneys to an airline company for a similar purpose. However, for whatever reason, it preferred to give the Community Synagogue an option; the price was fixed at \$215,000. The congregation was pleased at the bargain price and at the fact that the place seemed ready-made for their purposes. The main building had one room large enough to serve as the sanctuary—it even had an elevated cabinet with sliding doors that could be used as the Ark. The other buildings answered the needs of the congregation's social and study groups for meeting rooms. Add its recreational facilities, and The Chimneys provided accommodation for all the social and sports activities that the contemporary synagogue-center demands. There was even a commodious kitchen with a still valid motto perdurably baked into the decorative tiles above the range: Waste Not Want Not.

But there was a catch. On August 17, 1954, soon after the synagogue took its option, the trustees of the Village of Sands Point amended its zoning ordinance so as to restrict the right to maintain a church on

hitherto residential property. The congregation took the matter to court, asserting that the amendment was unconstitutional. Before the case came to a hearing, however, the trustees of the village, apparently appreciating that its action might be interpreted as being directed at the Community Synagogue and it alone, amended the amendment. The ordinance now simply stated that to convert a one-family residence to another use required the approval of the Board of Zoning Appeals. Satisfied that the congregation would be able to obtain such approval, its attorney, Mr. Henry Root Stern, Jr. (of Sprague and Stern, a prominent Nassau County firm) withdrew the suit and recommended completion of the purchase. The synagogue took title to The Chimneys in February 1955.

THE public hearing before the Board of Zoning Appeals was held on April 26, and it soon became apparent that a long time would elapse before the congregation would be allowed to take possession of its home. When first informed that his case would appear only seventh on the agenda, Mr. Stern had asked it to be put at the head of the list. Not until 8:30 on the night of the hearing was he told that his request had been granted. But as he did not have all his witnesses ready, he asked for an adjournment. Mayor Bergman protested that such meetings cost a lot of money—the village had engaged special counsel for the occasion—and that since Mr. Stern's request had been granted, there was no valid reason for postponing the hearing. And he added, "I think Mr. Stern is over a barrel." However, the chairman of the board, Mr. Chester E. Bates, put the hearing over until May 10.

On May 10, 1955, anticipating the main lines of the opposition's arguments, Mr. Stern presented five witnesses to refute them in advance. Mr. Louis L. Tieman, resident architect and general manager of the Holmes estate, testified that the main building and garage were fireproofed, that the other frame buildings were backed with

solid brick walls, and that none of the tenants who had occupied the premises since the Holmes family moved out had complained about the sanitary facilities. An engineer who had inspected the swimming pools said that with certain changes they would be approved by the New York Department of Health; so would the drainage system.

Rabbi Daniel Davis, Director of the New York Federation of Reformed Synagogues (the metropolitan agency of the Union of American Hebrew Congregations), explained the three-fold function of the synagogue as a place of worship, a house of study, and a house of assembly. This had also been set forth in the synagogue's application for a use permit, which declared that the various social groups in a congregation "are a great source of strength to the synagogue, financially as well as spiritually, and they provide an important means to reach out to persons who might otherwise stand at the periphery and thus bring them to the service of God." In corroboration Rabbi Davis referred to his own quarter-century of experience as a spiritual leader in Lancaster, Pennsylvania, where, he said, not one Jewish child had been brought before the juvenile court; he attributed this to the facilities provided by the synagogue.

This defense of the social activities of the synagogue had particular point in the case; for Mr. Nathaniel E. Hess, then president of the congregation, in his testimony objected "vigorously to the malicious rumors that have been spread through Sands Point that this is going to be a country club." To meet a possible charge that the noise of children and cars might disturb the neighborhood (though there are few homes close to the grounds), he said that attendance at the Sunday School sessions on Saturday and Sunday was expected to be about a hundred, and that a maximum of perhaps four hundred and fifty persons would gather for the High Holidays.

An experienced real estate man was put on the stand to testify that the establishment of a religious institution in The Chim-

neys would "certainly not depreciate" the value of adjacent property since "prospective buyers [of land] would possibly want to live near their house of worship."

The only witness put on the stand by the village was its recently appointed building inspector, who had looked the estate over in the course of a two-and-a-half hour visit. He testified that the buildings did not conform to the village's building code, dated January 3, 1955. (Mr. Stern objected, to no effect, that the code was not *adopted* until March 15, the very day on which the synagogue filed its application for a permit.) Since Colonel J. A. Dykman, special counsel for the village, had previously stated that a provisional use permit could not be issued while the changes required by the building inspector were being made, the inspector's testimony cut the ground from under the synagogue's case.

AT THIS point in the hearing Mr. Hess had had his fill of law: "There is an undertone to the whole proceeding since we started to apply for a permit. . . . There is an undertone to this whole thing of constant delay. In addition . . . there have been public statements made by Mayor Bergman of Sands Point that we will never get a permit. . . ."

"One moment," said the chairman. "I'm not going to allow this."

But Mr. Hess was not to be stopped. After a heated exchange he went on: "I think it is time somebody spoke up. We have heard all the testimony. We have heard from experts of all kinds. There isn't any question . . . that that building is strong enough to put the Empire State Building on top of it . . . and yet this folderol goes on and on while our synagogue is without a home. . . ."

Nevertheless the folderol continued, and indeed with new variations; for the question of the submission of plans of The Chimneys—on which the building inspector could specify the changes required to make the property satisfy the requirements of the law—provided a fine opportunity.

Mr. Stern's position all along had been that the ordinance did not require the submission of plans with an application for a use permit. But when it appeared that the village authorities were going to make their absence a ground for denial of the permit, he offered to put in evidence such incomplete plans as were available. We need not follow all the devious legal moves. Mr. Stern asserts that he withdrew his offer when it seemed that the board was going to use the plans for further delaying action—a result his action did not prevent. For when the hearing of July 26, previously scheduled, took place, Mr. Bates opened and closed it with the statement that there was nothing before the board to hold a hearing on. In the enforced absence of Mr. Stern, an associate offered to put the plans in evidence. Mr. Bates held that this was unfeasible: the village's special counsel was abroad and the building inspector needed time to study the plans before he could discuss them. Counsel left the plans, presuming that he was putting them in evidence for the next hearing. But when that was held, on August 30, Mr. Bates ruled that the plans had merely been filed with the village clerk or building inspector. Hence there was again no agenda for the hearing; he would accept the plans in evidence, but would not allow immediate discussion of them.

The matter was becoming farcical. It was ended by Mr. Stern's amending the original application to request the use of only the main building—to avoid the possibility that the Board would make a finding of fact that the request to use the recreational facilities was not within the purposes and usages of a religious institution, a finding that would have been difficult to combat in the courts. The congregation was willing to forego use of the outdoor recreational facilities and the smaller buildings, which it was ready to place at the disposal of the village. It was even willing to consider paying taxes, though it was legally tax exempt. Despite these concessions, despite the fact that half a dozen ministers of the area urged the village authorities to grant the

permit, and not a single individual had opposed it, the Board of Zoning Appeals ruled against the synagogue, citing seventeen "findings" for its action.

THE Community Synagogue took the case to court. The Appellate Division of the Supreme Court of New York upheld the board by a vote of four to one, but the Court of Appeals, the highest tribunal in New York State, reversed the decision of the lower court by a vote of six to one. It held that, since an interpretation of the ordinance was involved in determining the validity of the synagogue's petition, a question of law and not of fact was at issue. And as the synagogue's statement of its purpose was "almost entirely in the words of the ordinance," its petition should have been granted. The court held several of the board's findings, such as the one that the synagogue "would be inconsistent with the character of this district," to be "arbitrary and capricious." The board had found that the synagogue was not going to use the property entirely for religious purposes; the court declared that this objection was based on too narrow a definition of "religious purposes." As for the findings that the plans of the property had not been submitted, and that the board was therefore unable to judge whether the main building was a place fit for public assembly, with proper sanitary facilities, sufficient light and air, protection against fire, etc., etc.—the court held them all invalid—by means of them "the board [had] attempted to impose conditions which were not set forth in the ordinance." It was in the board's power to see that such conditions were met before the premises were occupied, but it should have first granted the synagogue a use permit. Without such a permit, the synagogue would have no assurance that the alterations it made would not be in vain.

Thus was the case happily resolved. We still do not know why the village trustees and members of the Board of Zoning Appeals were so dead set against the synagogue. Sands Point has never had a church

of any kind and it has also refused to sanction a (private) school. (Only recently, however, this edict was defied and its legal attempt to "disestablish" the school defeated.) This would seem to bear out the contention of the village that it opposed the synagogue only to preserve its rusticity against the incursions of public institutions. And Mayor Bergman has pointed out that the village gave the synagogue permission to build in Harbor Acres in the first place. (An Indian gift, say those who believe that the suit of the Harbor Acres residents was "inspired.")

While the case was in litigation, Mayor Bergman was interviewed over the telephone by a writer for the *National Jewish Post*. (Subsequently he refused to speak to this writer.) Among other things, he said that the Holmes Foundation was creating a religious issue for publicity purposes, in order to sell its property more easily; that the telegram from Averill Harriman (a Sands Pointer) calling the zoning restriction "un-American and un-democratic" was a gesture toward the Jewish vote; that it was not the good old Jewish families of Sands Point—Bernard Baruch, the Guggenheims, and others—but the newcomers (Mr. Hess has lived there for sixteen years) who were "creating religious problems that they came here to escape," in a town "where there has never been any discrimination and where there are probably the largest number of successful intermarriages in the country." Possibly Mayor Bergman felt that a synagogue in their midst would disturb the equanimity of the successfully intermarried. But it is possible that the chief motive of the opposition was a quite trivial one. At the hearings in Beachwood, several people objected to the establishment of a temple for the reason that they had moved to a suburb in the first place to escape churches and all such institutions. While no one voiced this objection at the Sands Point hearings, I have heard it many times, from Jews as well as non-Jews, around Sands Point and elsewhere; and it was a realistic rabbi who said to me that "a religious institution—

church or synagogue—is a royal pain in the neck in residential areas. Traffic, noise, parking—all are legitimate concerns of the neighbors." Very possibly Mr. Bergman had this in mind when he said, in the interview from which I have already quoted: "We are constantly denying applications, and we feel no moral obligation to let people make a club, or synagogue, or any other institution wherever they want to."

In its brief submitted to the Court of Appeals, the village had claimed only the right to restrict the *location* of a church or synagogue, not the right to deny it a place in the village; but the court saw the possibilities of evasion in so arbitrary a power, and denied it. Still, people do say: "Would *you* want to live near a synagogue or church or school and stand for all that noise? Would *you* want your property to depreciate in value?" In refusing a permit for such reasons, which are not always avowed, local authorities may be simply executing the will of the people.

THE decision of the Court of Appeals in the Community Synagogue case, on July 11, brought to a speedy close a similar case which had developed elsewhere in Long Island at about the same time. Toward the end of 1955, the Garden City Jewish Center, which had been conducting services in quarters made available by Adelphi College, contracted for the purchase of—and later took title to—a three-story building with the intention of converting it into a synagogue-center. In Garden City the zoning board, after holding six hearings in as many months, denied the center a permit because among other reasons, the site—less than an acre and a half—was too small. Too small, that is, to allow for *future expansion*. So patently indefensible an objection argued a desperate case. What really seemed to be troubling the board came out openly in its further finding that the synagogue "would alter the character of the neighborhood." This is a broad statement of the kind usually made in cases of this

sort. In Garden City, it had a more precise meaning. As the *New York Times* reported the case, "Until about five years ago, Garden City was, in effect, a 'restricted community,' with few Jewish families living here. But in the last few years the Jewish population has increased, with the center now numbering 200 members [representing 68 families]." The implication is plain. Among the center's members, the belief that they were faced with discrimination was very strong, even though they were unable to point to any more overt evidence of bias than the extreme bitterness of the opposition.

Fortunately, the attorney for the center, Mr. C. Walter Randall, did not have to grapple with this shadowy issue to make his case; he based it entirely on the right of any sect to establish a church in Garden City. The zoning board turned down the center's petition on May 14. The Court of Appeals ruled in favor of the Community Synagogue of Sands Point on July 11; and on July 23 the Supreme Court of New York, with this precedent before it, granted the Garden City center's appeal.

Since the courts have so far upheld the reasonable petitions of synagogues, zoning boards are likely to be more careful about captiously denying building permits. This does not mean that congregations may expect only clear sailing in the future; undoubtedly there will be further cases of determined opposition to synagogues and temples coming into suburban communities. Individual congregations will continue to have to decide whether to yield or carry the fight to the courts. Litigation costs are only one factor causing synagogue leaders to hesitate to resort to law. A greater deterrent is their distaste for making themselves conspicuous in the courts, for seeming to be "aggressive." Yet if the courts cannot enjoin a community to welcome its Jewish residents in the spirit of good neighbors, they are able to enforce the principle of religious toleration. And that is always something worth fighting for.